

**LAKE COUNTY PLANNING BOARD**  
**July 13, 2011**  
**Meeting Minutes**

**MEMBERS PRESENT:** Bob Kormann, Lisa Dumontier, Sigurd Jensen, Steve Rosso, John Fleming, Janet Camel, Brian Anderson, Jerry d'Aquin

**STAFF PRESENT:** Joel Nelson, LaDana Hintz, Robert Costa, Karl Smithback, Lita Fonda

Bob Kormann called the meeting to order at 7:00pm.

**Motion by John Fleming, and seconded by Steve Rosso, to approve the April 13, 2011 meeting minutes. Motion carried, 5 in favor (Bob Kormann, Sigurd Jensen, Steve Rosso, John Fleming, Janet Camel) and 3 abstained (Lisa Dumontier, Brian Anderson, Jerry d'Aquin).**

**Motion by John Fleming, and seconded by Steve Rosso, to approve the June 8, 2011 meeting minutes. Motion carried, 7 in favor (Bob Kormann, Lisa Dumontier, Sigurd Jensen, Steve Rosso, John Fleming, Janet Camel, Brian Anderson), one abstained (Jerry d'Aquin).**

Steve Rosso declared a conflict of interest. He declined to discuss or vote on the upcoming item.

**AMENDED PLAT OF LOT 1 OF YARBROUGH TRACTS**

LaDana Hintz presented the staff report. (See attachments to minutes in the July 2011 meeting file for staff report.) She mentioned that David Houghton and Lou Moore, who are adjoining property owners in the area, both verbally expressed concerns about water being located on lot 3 this spring. She was there in May and could see water on the driveway from where she was. Hopefully the owner or agent would speak to this tonight. It was definitely a concern if there were high water there. It could have to do with the culvert crossing. She wasn't sure what the reason was for the water on lot 3. No written comment or testimony had been received from either David Houghton or Lou Moore.

LaDana suggested condition #23 should be updated to address the road supervisor's comment for the additional items to be done to approach 1, by adding the following at the end of the condition: *As requested by the Road Supervisor, the existing approach to lot 1 shall be raised up approximately 3 feet, the fence shall be removed, and brush shall be cut down to improve site distance.*

LaDana detailed she suggested to both David Houghton and Lou Moore that they attend the meeting or submit written comments. Bob asked if they had additional concerns. LaDana explained the neighbors came out against the proposal during the Board of Adjustment review. They didn't like that the lots were less than 5 acres in size. These concerns had been expressed again, although the Board of Adjustment approval did approve of 5-acre lots.

John referred to the high water on lot 3. LaDana said she saw a little bit of water on the driveway. It came from the creek. The culvert didn't look flooded or full. She had asked David Houghton about it, who said it flooded up above near his property. The group determined that this was the property to the west of the subject property.

Janet asked about concerns with the 2 gallon per minute rate at that well. LaDana replied this would be reviewed by DEQ or Environmental Health. The average for the area was in the report.

Dave DeGrandpre spoke on behalf of the applicants, whom he introduced. This was an existing subdivision tract; the family transfer exemption was not available. The intent was to create 2 parcels for 2 children. Regarding the 2 gallons per minute, he said this was not accurate. This was an artesian well. Dave reported that Steve Spencer told him the pump hasn't been in the well for the last two months, because [the artesian well] was flowing.

Regarding the water over the road, Dave explained that last summer, Lake County upgraded Big Lodge Lane and Big Lodge Road, which leads to Big Lodge Lane. When they did it, they put a culvert in this ephemeral stream. The stream didn't flow year-round, and was typically only there during big rains, snowmelts and runoff events. This year was different, because of more precipitation. The culvert was not of adequate size to accommodate the flows, so the culvert backed up and pushed water down the property. The property sloped generally to the east, with the general flow to the east. The eastern portion of the property didn't have much grade to it. Because the culvert was undersized, the water ran along the [county] road. The road acted as a dam and pushed water downstream or downhill towards Rollins. It overtopped the road in a couple of spots this year. There were a couple of other low spots where culverts should have been installed but weren't. He thought this was what the flooding was about. The Spencer family members added the water couldn't go through the pipe so it ran over the top of the road and down the property. That was why it did damage to the road that the County just put in, down further, below their property.

John asked if the water was trying to flow from the property to the north and east. Dave responded at the map, showing the historic Big Lodge Creek, from where the water came from. He thought the stream was relocated in the 1960's, and talked about what various maps showed. He said the stream was essentially an irrigation ditch that was an ephemeral stream and was used for irrigation by others (not by the Spencers) and was relocated to flow through the property in possibly the early 1960's. In most years, it ran dry, not far south of the property. He checked with the applicants. Steve Spencer detailed that it went dry on the property, and would be dry within a month. Usually it was dry sooner. Sigurd asked if ponds were put in. Dave answered they were on the property to the NNE. There were some issues with irrigation and DNRC.

John asked if a large enough culvert in the right place would solve backwater problems. Steve S thought this was absolutely so. He thought the reason they didn't use a larger diameter pipe was if they put in a 3-foot diameter pipe rather than a 2-foot pipe they wouldn't have had enough cover over the road. What it needed was a double-barreled 2-foot pipe. John asked if it was in the wrong place. Steve S replied it just wasn't an adequate size. The water couldn't go through the pipe so it ran down the roadway or along side the roadway.

Janet asked about the depth to water table in the soils report. If it was shallow, when you had a high precipitation year, that water table could rise and cause a problem also. LaDana relayed the information from the report. Janet noted the information was listed in the bigger [application] packet on pg. 40, in the soils report. Dave relayed the information from the appropriate report.

Dave commented on the staff report. He liked the new format, which seemed simple, direct and helpful. He addressed the variance request. The revised subdivision regulations required a 150-foot structural setback from a stream, including an ephemeral one, and a 100-foot vegetative buffer. So within the 150 feet, there's a 100-foot vegetative buffer. The variance requested would have the 100-foot buffer and setback, but would not have the additional 50-foot setback. The applicants had to seek comment from the agency having jurisdiction over the stream. There was no agency that had jurisdiction over ephemeral streams off of the reservation. Dave requested comment from MT Dept. of Fish, Wildlife and Parks (FWP). They responded but chose not to address the stream. He sent a letter to the Dept. of Natural Resources and Conservation (DNRC) at both the Kalispell and Missoula offices. They chose not to respond. The Lake County Conservation District confirmed that they did not have jurisdiction over an ephemeral stream. He thought that no comments were submitted because no agency felt like they had jurisdictional authority, and they didn't think it was a big enough deal.

Dave listed that it was a 3-lot subdivision, there's development around it, it's an ephemeral stream and it was a pretty low priority. This wasn't a water quality issue. The stream flowed only a small portion of the year. The buffer and setback were set up to protect water quality and wildlife habitat. This stream didn't reach Flathead Lake. The area of the variance on the east side of the stream was relatively flat. There weren't highly erodible soils with steep slopes where sedimentation would occur into the stream. It wasn't a wildlife habitat issue or a public health and safety issue.

He talked about why the variance was requested, using the plat. The stream divided the property into a small area on the east side. The property to the NE was a small-scale working cattle operation. Lake County typically tried to prevent impacts to agricultural operations by requiring certain setbacks. He checked with Joel, who said 100 feet was standard. Dave continued that in the Upper West Shore zoning regulations, there was only a 20-foot setback. He said part of the hardship was the cattle ranch next door was an area that didn't have a lot of vegetation on it. The parcel in question was triangular. He pointed out more features on the map. They wanted to create a building site that was sufficiently separated from the cattle ranch next door. This fell in line with Lake County's precedent. He summarized that part of the unique hardship was the adjacent land use. He thought it made sense, since it wasn't a water quality issue or wildlife habitat issue, and it made sense with the topography and the adjacent land use. He requested that the variance be approved based on conditions unique to the property, and that condition #5 be amended.

Dave brought attention to condition #4. A 40-foot easement currently existed along Big Lodge Lane. The Spencers offered to dedicate a 20-foot additional easement for a typical 60-foot easement. They wanted something in return for that. Typically, Lake County required those sorts of things, but he didn't think they could anymore. He thought it would be considered a

taking of property without just compensation, which violated the Constitution. Sometimes dedications were required in accordance with the requirements when the dedication was related in both nature and extent. If it were directly related to the impacts generated by the subdivision and if it were in proportion, the impacts were of a certain nature so that the dedication would be roughly in terms of dollars or in terms of the need generated by the subdivision proportional. He thought it was neither in this case, and nothing in the staff report addressed it. He asked for the requirement of dedication in condition #4 and mention of the county road to be removed. This was at the end of the County road. If the Country was to upgrade the road and need the additional 20 feet, he thought the Spencers would be willing to grant it. Parkland requirement was 0.23 acres. The easement would be 0.58 acres. He wanted to trade them. He repeated his request to remove the reference to county roads in condition #4.

Bob asked how long the creek might run. Steve S replied it was almost done now. It went from full pipe last week to half a pipe. It would be dry in the middle of their property in 2 to 3 weeks. He answered that the road was improved last summer, in response to Bob's question. He added there was a pipe there before. They replaced an old round one with an oval 20" pipe. It was still a 20-inch pipe incapable of taking the water. This happened other years and this year. They also raised the road on the east end of the property, which created more of a dam. The water pooled at the east corner of the property. Then it crossed the road and washed out part of the new road. Most years the water was able to sink into the low spot in the corner of the property. This year there was too much volume.

Bob checked with Dave that they wanted to start a building between 100 feet and 150 feet. Janet asked if the stormwater retention pond be included in the 150 foot. Joel explained the 150 feet was the setback for structures. Bob asked if the requirements for setbacks from water didn't differentiate between full time stream and part time stream. Joel said no, it was streams and lakes structural setback 150 feet, and vegetative buffer 100 feet. Wetlands and ponds were different. It did say perennial or intermittent stream, creek, river or wetland. There were setbacks and vegetative buffers along the water bodies. It applied to all streams. He read the introductory part of section 10.D.D of the subdivision regulations, which included intermittent streams, and table 7 almost a page later, which gave the setbacks and buffers for various water body types. Janet asked [inaudible]. Brian said they were drainage ways but not a jurisdictional stream. Most ditches could be classified as that. Janet said as far as draining snow, rainwater and stormwater, we did need to allow for high precipitation years. Brian agreed, but he didn't know if jurisdictional stuff applied to this. It wasn't an intermittent stream that ran year-round, diving under and popping back up. In wetland delineation, there was a big difference between a perennial stream and something that was just there for 2 months. He wondered if it was a jurisdictional wetland that was attached to something.

Joel said the regulations found 3 stream types: ephemeral, intermittent and perennial. Bob checked that they all had the same setback. Joel noted the table said all streams. Brian said if they defined 3 separate ones, they only listed 2 with the setbacks. Joel said no, where the setbacks were listed, it called out setbacks from streams. Ephemeral fell within one of the 3 stream types. Sigurd asked for clarification between intermittent and ephemeral. Joel read definitions. Bob checked which type was being dealt with. Joel checked that it flowed for weeks or months every year. Steve S said where it actually crossed the road, it ran for 2 to 3

months out of the year. It went dry on their land for the rest of the year. Joel summarized that an intermittent stream ceased to flow for weeks or months each year. This sounded like an intermittent stream. John asked if the regulations made a distinction. LaDana and Joel answered no. Joel read the very introductory portion of the setbacks and buffers sections, where it specified the provisions that followed applied to all subdivisions that contained perennial or intermittent streams.

Bob asked what the lack of comment from jurisdictional agencies said to a planner. LaDana said there was no comment to address the buffer setbacks. They were complying with the setback right now as shown on the plat. Janet said it looked like there was enough room for the 150 feet on the plat. LaDana agreed. Janet said the stormwater detention ponds could be within the 150 feet because it wasn't a structure. It was a detention area. Joel agreed an underground infiltration chamber would not be considered a structure.

Bob asked Dave to tell the hardship again. Dave said the structure could be located in compliance. They preferred to place it otherwise because the stream created a fairly small area, it was a rural area where people liked to look across, the adjoining landowner was an agricultural one, there's not much vegetation on there, and they want some privacy. His driveway went right up against it. Dave thought the hardship was the size of the property, the fact that the adjacent land use was agricultural, they tried to buffer that much and [inaudible] 20 foot setback; it wasn't necessary, given the stream only flowed 2 or 3 months of the year, sedimentation chance was very low and it didn't reach Flathead Lake.

Bob asked what happened to the overflow in the artesian well. Steve S said their pump went out over two months ago. They've had water for the house and watering, with 30 pounds of pressure. The rest of the time the artesian is sealed. Janet asked what it was like in the winter. Was it artesian year-round?

Bob's first thought on condition #4 was to let the Commissioners and staff and applicants hammer that out, rather than having a recommendation from the Planning Board. It sounded almost more like a legal matter than something for the Board. He asked for other thoughts on this. The Board members murmured agreement. Janet checked that a proposal was that cash in lieu of parkland dedication be waived. Her concern was that there never was enough money in the park budget. She hated to see the parkland requirement be waived or traded. She agreed this should go to the Commissioners for a decision, but she wanted to comment on the record. John asked if this meant leaving [the condition] as is. Bob affirmed.

*Public comment opened:* None was offered. *Public comment closed.*

Bob outlined that a motion would be needed for the [buffer] variance, which was discussed on pg. 9 and 10. The variance request was to go from 150 feet to 100 feet.

**Motion made by John Fleming, and seconded by Lisa Dumontier, to accept the variance.**

John said common sense said 150 feet wasn't needed, but he agreed with the staff point that it wasn't a hardship, so he was going to vote against this. He wished that decision didn't have to

be made. He wasn't keen on variances and wished this could have been solved in some other manner. The Board rules said there had to be a hardship that was not created by the developer, and he just wasn't sure there was a real hardship there.

Janet agreed. She hated to see a precedent set to start to allow variances on the stream setback. They worked very hard to get the setbacks in place. It didn't look like a hardship. The pictures showed the area was somewhat wooded. There were trees for some buffer.

Sigurd said as an agricultural person, he thought both parties would be happier with more space between them.

**Motion carried, with 4 in favor (Bob Kormann, Lisa Dumontier, Sigurd Jensen, Brian Anderson) and 3 opposed (John Fleming, Janet Camel, Jerry d'Aquin).** [Reminder: Steve R abstained from this agenda item early in the meeting.]

LaDana commented that she didn't see a condition addressing the parkland requirement, so the Board would need to add something. The wording could be written later if the Board was okay with that. The parkland requirement did need to be addressed.

Bob asked for clarification on pg. 20 for condition #23. LaDana explained the Road Supervisor mentioned a few things when they met on-site. The road supervisor said if they did these things, the road approach would be fine. She wanted to make sure those things were included in #23. There things were: the existing approach on lot 1 shall be raised up approximately 3 feet, the fence shall be removed, and the brush shall be cut down to improve the site distance.

Bob checked about the culvert. He understood the recommended option was if the culvert got changed or improved it would be at the cost of the people in the subdivision. LaDana thought that was up for discussion with the Commissioners. She referred to the bolded section on pg. 5. She left that in there because she wasn't sure who would end up paying for it or what would happen. She thought it should be left up to the Commissioners. These were the standard things they typically put in a subdivision if the road wasn't up to standards already, or storm drainage.

Bob thought if the County improved this last year and didn't put in an adequate storm drain, he didn't think the subdivider or the landowners should be charged for that. He wanted to be sure to get this comment in the record for the Commissioners. John, Lisa and Jerry agreed.

**Motion made by Janet Camel, and seconded by John Fleming, to recommend approval with the conditions as stated with additions and correction: with the additional recommendation by the Road Superintendent [for condition #23] and also a parkland requirement condition. Motion carried, all 7 in favor (Bob Kormann, Lisa Dumontier, Sigurd Jensen, Brian Anderson, John Fleming, Janet Camel, Jerry d'Aquin).**

### **OTHER BUSINESS**

Discussion touched on a variety of items. The Kerand Major Subdivision, whose introductory meeting was last month, was withdrawn for redesign, and may become a minor subdivision. Lake Mary Ronan zoning updates were touched upon. The situation with cell tower regulations

(or lack of) was brought up. The lakeshore regulation update status was discussed. Invasive species issues came up, along with the suggestion to include something in the lakeshore regulations. Steve R mentioned Eric Hansen, an invasive species specialist, was a new hire by Lake County, along with the contributions of other groups, to manage the problem for Flathead Lake. John noted the State commitment to this was not huge. More discussion ensued on the topic.

**Motion made by Steve Rosso, and seconded by Sigurd Jensen, to adjourn. Motion carried, all in favor.** Meeting adjourned at 8:20 pm.